

Planning Department

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6631  
Fax (978) 929-6340  
planning@acton-ma.gov

---

**MEMORANDUM**

**To:** Board of Appeals **Date:** December 29, 2011

**From:** Roland Bartl, AICP, Planning Director

**Subject:** Hearing #12-01 - Petition for Review re: Walker Realty LLC

---

In 2009, Walker Realty proposed to build a large child care facility. The Board of Appeals denied Walker's application on the grounds that it did not comply with the Zoning Bylaw's FAR requirements. Walker appealed the Board's decision and that case is still pending in the Land Court and scheduled for trial beginning in March 2012. Now before the Board is a revised proposal for essentially the same size facility – more than 20,000 square feet in Net Floor Area. The new proposed facility location is shifted to the north onto the land currently used as a landscaping business and garden center (Kennedy)<sup>1</sup> and closer to the Public Safety Facility. The Kennedy operation would be relocated south to where the child care facility was previously proposed. With this change, the project proponent has acquired more land area for the proposed facility. As with the prior location, the site is in the Residence 2 (R-2) zoning district.

In June 2009, following detailed review of the statute, case law, and the residential zoning districts in Acton by the Planning Board, Town Meeting updated the Zoning Bylaw standards for Child Care Facilities in Residential Districts (see Exhibit A). In the presentation to Town Meeting, the Planning Board summarized the history of Child Care Facility zoning in Acton and explained the reasons for the change and the context in the various zoning districts (see Exhibit B)<sup>2</sup>. Town Meeting voted to amend the Zoning Bylaw accordingly.

As a result of the 2009 Town Meeting action, the dimensional regulations for Child Care Facilities in the Residential Zoning Districts are as follows (R-2 standards are highlighted):

5.3.9 Child Care Facilities in Residential Zoning Districts - In addition to the standards set forth in the Table of Standard Dimensional Regulations, the following standards shall apply to Child Care Facilities located in Residential Zoning Districts:

---

<sup>1</sup> An agricultural use by the definition of M.G.L. Ch. 40A, S. 3.

<sup>2</sup> The FAR-histograms in Exhibit B may not have been presented at Town Meeting. Instead, they are summarized on slide 4 of the presentation. Similarly, Floor Area histograms were developed. All data and histograms were discussed at the public hearing of the Planning Board on the proposed zoning change prior to the 2009 Special Town Meeting.

	R-2	R-4	R-8 & R-8/4	R-10 & R-10/8	R-A & R-AA	VR
Minimum OPEN SPACE not including outdoor play areas	35%	35%	35%	35%	35%	35%
Maximum FLOOR AREA RATIO	0.10	0.07	0.04	0.03	0.20	0.17
Maximum NET FLOOR AREA	2,500 sq. ft.	3,500 sq. ft.	5,000 sq. ft.	5,000 sq. ft.	5,000 sq. ft.	2,500 sq. ft.

As outlined in the attached Exhibit B, on the 3,830 parcels in the R-2 zoning district that were reviewed the average FAR of residential buildings is 0.08, and their built average floor area is 2,062 square feet. Thus, the net floor area and FAR limits for childcare facilities in the R-2 zoning district lie above these averages. As stated in the 2009 warrant article summary (Exhibit A), these limits are intended “to reasonably accommodate stand-alone child care facilities in residential zoning districts, while also maintaining a reasonable and proportionate relationship to residential buildings in Acton’s residential zoning districts”.

In addition to the revised dimensional controls for Child Care Facilities Town Meeting also adopted a new cap on the number of parking spaces for Child Care Facilities in Residential District as follows:

(Minimum parking space requirement)

6.3.1.5 Child Care Facility (1) One space per ten (10) children of rated capacity of the child care facility plus one space for each staff person on the largest shift.

(Maximum)

(1) The number of parking spaces for a Child Care Facility in a Residential Zoning District shall not exceed the minimum requirement.

The proposed facility now before the Board of Appeals fails to comply with several zoning bylaw requirements; most notably it fails to comply with the Net Floor Area limit of the zoning bylaw that is set for 2,500 square feet in the R-2 zoning district<sup>3</sup>. The proposed facility is not just marginally larger than the zoning bylaw’s Net Floor Area limit, but eight times larger. In addition, the parking lot would be about eight times larger than that maximum allowed for a facility that would meet the Net Floor Area limit. The result would be a development that is entirely out proportion with the surrounding residential properties and that would have a decidedly commercial character within a residential zoning district and a neighborhood that otherwise consists primarily of moderately sized single-family homes.

If the Board of Appeals should decide to overturn the ZEO’s determination that the proposed facility violates the zoning bylaw or waive the zoning requirements on grounds offered by the proponent or otherwise, the Board might want to consider the following:

1. Require a traffic impact study and appropriate improvements on Main Street. The previous proposal included improvements on Main Street with left turning lanes and a crosswalk at the site drive (relocated from the Route WB exit ramp). This proposal does not. In addition,

<sup>3</sup> With the total land area now proposed the facility would comply with the FAR 0.10 limit.

the proposed location is closer to the Town's Public Safety Facility. Any potential conflict with safety/emergency operations should be evaluated and addressed.

2. Kennedy's operation extends to the east side of Main Street. Presently the two parts of the operation are directly opposite from one-another. There are currently concerns with people (workers and customers) crossing frequently over Main Street. With the proposed relocation, the logistics of this will be more complicated and pedestrian safety may be a greater concern. This should be evaluated and addressed.

Attachments: Exhibit A – June 23, 2009 Special Town Meeting, Article 2 abstract and summary.  
Exhibit B – June 23, 2009 Special Town Meeting presentation.

cc: Planning Board  
Town Manager

I:\planning\zba\12-01, walker realty (ngcc).doc



TOWN CLERK  
EVA K. TAYLOR

**TOWN OF ACTON**  
472 MAIN STREET  
ACTON, MASSACHUSETTS, 01720  
TELEPHONE (978) 264-9615  
FAX (978) 264-9630  
clerk@acton-ma.gov

---

**ABSTRACT OF THE SPECIAL TOWN MEETING HELD**  
**TUESDAY, JUNE 23, 2009, 7:00 P.M.**  
**ACTON-BOXBOROUGH REGIONAL HIGH SCHOOL AUDITORIUM**  
NUMBER OF REGISTERED VOTERS ATTENDING SPECIAL TOWN MEETING  
JUNE 23, 2009 – 416

---

**ARTICLE 2      AMEND ZONING BYLAW – CHILD CARE FACILITIES**  
(Two-thirds vote)      **IN RESIDENTIAL DISTRICTS**

To see if the Town will vote to amend the zoning bylaw as follows:

1. In Section 5 – Dimensional Regulations, delete subsection 5.3.9 and replace it with a new subsection 5.3.9 as follows:

5.3.9 Child Care Facilities in Residential Zoning Districts - In addition to the standards set forth in the Table of Standard Dimensional Regulations, the following standards shall apply to Child Care Facilities located in Residential Zoning Districts:

	<b>R-2</b>	<b>R-4</b>	<b>R-8 &amp; R-8/4</b>	<b>R-10 &amp; R-10/8</b>	<b>R-A &amp; R-AA</b>	<b>VR</b>
Minimum OPEN SPACE not including outdoor play areas	35%	35%	35%	35%	35%	35%
Maximum FLOOR AREA RATIO	0.10	0.07	0.04	0.03	0.20	0.17
Maximum NET FLOOR AREA	2500 sq. ft.	3500 sq. ft.	5000 sq. ft.	5000 sq. ft.	5000 sq. ft.	2500 sq. ft.

*[Note: Subsection 5.3.9 currently reads as follows:*

*5.3.9 Child Care Facilities in Residential Districts – In addition to the standards set forth in the Table of Standard Dimensional Regulations, the following standards shall apply to child care facilities located in Residential Districts:*

<i>Minimum OPEN SPACE not including outdoor play areas</i>	<i>- 35 percent;</i>
<i>Maximum FLOOR AREA RATIO</i>	<i>- 0.10;</i>
<i>Maximum NET FLOOR AREA</i>	<i>- 1000 square feet.]</i>

2. In Section 6.3 – Minimum Parking Space Requirements by USE, add a footnote (1) to section 6.3.1.5 – Child Care Facility, and place the footnote at the bottom of the table after section 6.3.1.17 as follows:

- (1) The number of parking spaces for a Child Care Facility in a Residential Zoning District shall not exceed the minimum requirement.

, or take any other action relative thereto.

**MOTION:** Mr. Niemyski moves that the Town adopt the zoning bylaw amendments as set forth in the Article.

**MOTION CARRIES  
DECLARED 2/3 BY MODERATOR\***

\*TOWN OF ACTON HAS EXCEPTED MGL CH 39 SEC 15 AT ITS ANNUAL TOWN MEETING APRIL 2001,  
ARTICLE 43 AND THE AMENDED BYLAW 5A WAS APPROVED BY THE ATTORNEY GENERAL ON AUG. 6, 2001.  
(THE TOWN MEETING MODERATOR IS NOT REQUIRED TO COUNT A 2/3 REQUIRED VOTE.)

---

**SUMMARY (from Warrant)**

This article adjusts dimensional controls for child care facilities in residential zoning districts. In 1990 the State Legislature amended M.G.L. Ch. 40A (the Zoning Act) with the following insertion in Section 3:

“No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.”

Shortly after the enactment of the new State exemption, the Town adopted a zoning amendment in accordance with the new State statute. Child care facilities are allowed in all Acton zoning districts (except ARC – Agriculture Conservation Recreation), and no special permit is required. In non-residential districts, reasonable dimensional regulations apply to child care facilities in the same manner as to any other allowed uses. The amendment envisioned an accessory use to a residence in a residential zoning district. As a result, dimensional regulations adopted for child care facilities in residential districts are fairly stringent.

The courts have since provided some guidance as to the meaning of “reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements”. As a result, some of Acton’s restrictions now appear overly restrictive and potentially vulnerable to challenge. The article as proposed will amend the dimensional regulations to reasonably accommodate stand-alone child care facilities in residential zoning districts, while also maintaining a reasonable and proportionate relationship to residential buildings in Acton’s residential zoning districts.

This article is not intended to facilitate or to thwart Next Generation Children Center’s recent child care facility proposal for a location at 348 Main Street, and this article by itself would do neither. However, Next Generation’s proposal strongly suggested that the Town needed to review its zoning regulations for child care facilities and consider any necessary amendments to ensure its zoning rules are reasonable and defensible.

# Article 2 – Amend Zoning Bylaw Child Care Facilities in Residential Districts (Two-thirds Vote)

- Mr. Niemyski moves that the Town adopt the zoning bylaw amendment as set forth in the article



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment



## Article 2 – Amend Zoning Bylaw Child Care Facilities in Residential Districts

- *Proposed Adjustments to dimensional controls for child care facilities in residential zoning districts*
- *Proposed limit on the number of parking to the minimum number required*



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# Article 2 – Amend Zoning Bylaw

## Child Care Facilities in Residential Zoning District

Standard Dimension Require- ments Residential Zoning districts	Min. Lot Size (sq. ft.)	Min. Frontage (feet)	Min. Setback front (feet)	Min. Setback side/rear (feet)	Min. Open Space	Max. Height (ft)	Max. FAR
<b>Single-Family Districts (Standard: one dwelling unit per lot)</b>							
Residence 2 (R-2)	20,000	150	30	10	-	36	-
Residence 4 (R-4)	40,000	175	45	20	-	36	-
Residence 8 & 8/4 (R-8 & R-8/4)	80,000	200	45	20	-	36	-
Residence 10 & 10/8 (R-10 & R-10/8)	100,000	250	45	20	-	36	-
<b>Multi-Family Districts (Standard: multiple dwelling units per lot - in VR not more than four)</b>							
Residence A (R-A)	100,000	200	30	10	35%	36	-
Residence AA (R-AA)	10,000	100	30	10	35%	36	-
Village Residential (VR)	15,000	50	10	10	20%	36	-



**Article 2 – Special Town Meeting June 23, 2009**  
Zoning Bylaw Amendment



# Article 2 – Amend Zoning Bylaw

## Child Care Facilities in Residential Zoning District

Zoning District	Parcels counted	Average FAR Existing Residences	Average Sq. Ft. Existing Residences	Proposed Max. FAR (for Child Care Facilities)	Proposed Max.Sq.Ft. (for Child Care Facilities)
R-2	3830	0.08	2,062	0.10	2,500
R-4	334	0.06	2,465	0.07	3,500
R-8 & R-8/4	400	0.04	2,993	0.04	5,000
R-10 & R-10/8	66	0.03	3,702	0.03	5,000
R-A & R-AA	49	0.18	28,778	0.20	5,000
VR	98	0.18	2,522	0.17	2,500

Proposed Minimum Open Space: 35% (no change)



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# Article 2

## Child Care Facilities in Residential Districts Why Amend the Zoning Bylaw?

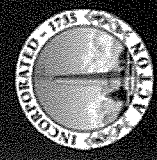
### State Law

- Requires that Child Care Facilities be allowed by right in all districts
- Allows reasonable dimensional regulations

### Current Standards for Child Care Facilities in Residential Districts

<i>Minimum OPEN SPACE not including outdoor play areas</i>	- 35 percent;
<i>Maximum FLOOR AREA RATIO</i>	- 0.10;
<i>Maximum NET FLOOR AREA</i>	- 1000 square feet.

(applies uniformly in all residential zoning districts)





# Article 2

## Child Care Facilities in Residential Districts Why Amend the Zoning Bylaw?

To accommodate stand-alone Child Care Facilities within the definition of “reasonable” under the statute and case law, while maintaining a proportionate relationship to residences in the various residential zoning districts



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# Article 2

## Child Care Facilities in Residential Districts Why Amend the Zoning Bylaw?

- *The state Zoning Act authorizes towns to impose "reasonable" regulations on the bulk of child care facilities, as well as the height, open space, parking and other aspects of their development. Towns may do so to preserve the scale and appearance of their residential neighborhoods, among other reasons.*
- *Acton adopted its current regulations of child care facilities in approximately 1993, when many facilities were home-based. Since that time, large commercial facilities have become more prevalent. The Planning Board recommends amending the Bylaw to accommodate those types of facilities more fully and to tailor the Bylaw to the different residential zoning districts in the Town. Those changes strike a balance between permitting child care facilities and preserving the Town's residential neighborhoods, in order to maximize the Bylaw's reasonableness with respect to various facilities that may be proposed.*



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment



## Article 2 – Amend Zoning Bylaw Child Care Facilities in Residential Districts

- Board of Selectmen recommends
- Planning Board recommends
- Finance Committee recommends



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment



## Article 2 – Amend Zoning Bylaw Child Care Facilities in Residential Districts (Two-thirds Vote)

- Mr. Niemyski moves that the Town adopt the zoning bylaw amendment as set forth in the article



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

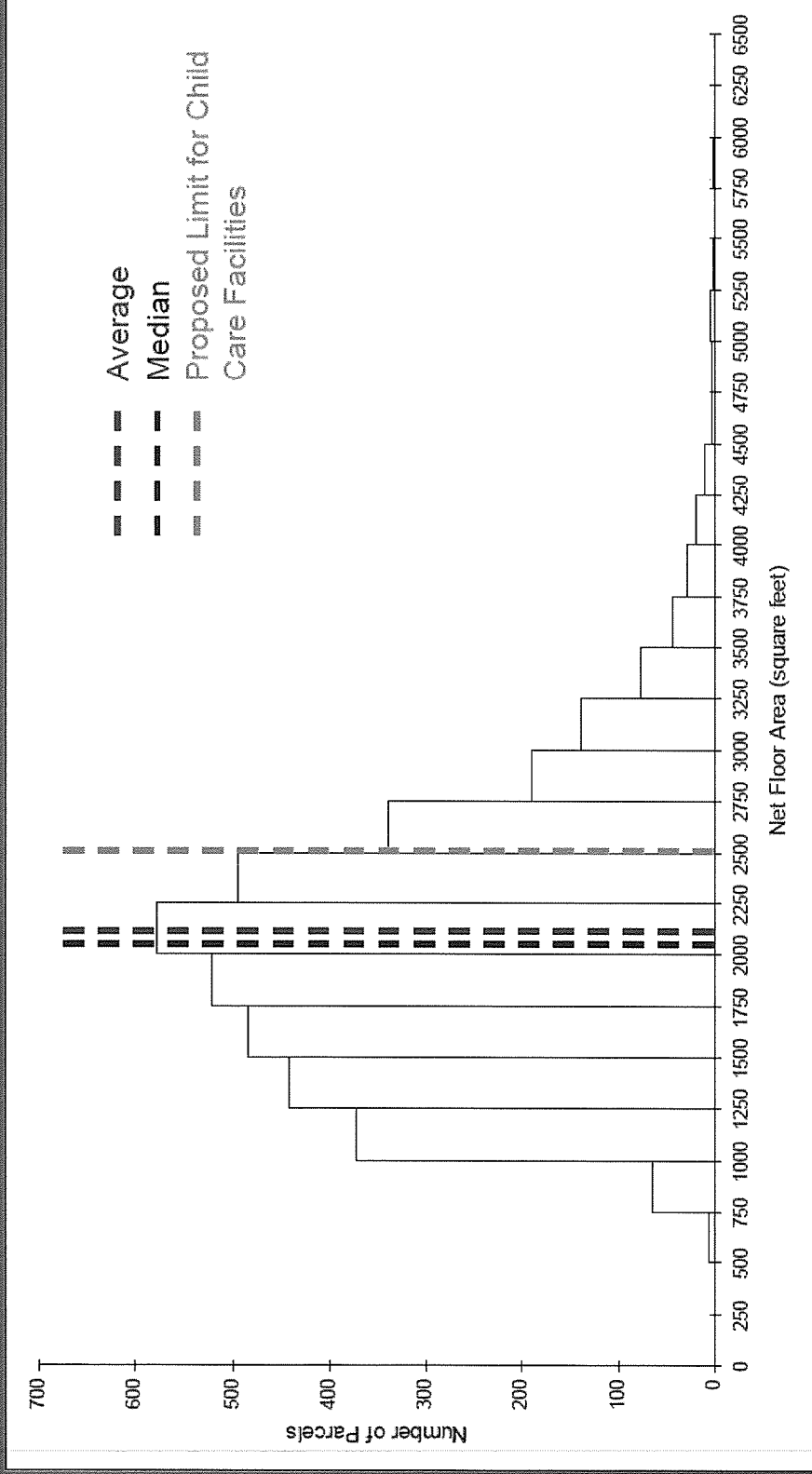
# Net Floor Area Histograms



**Article 2** – Special Town Meeting June 23, 2009  
*Zoning Bylaw Amendment*

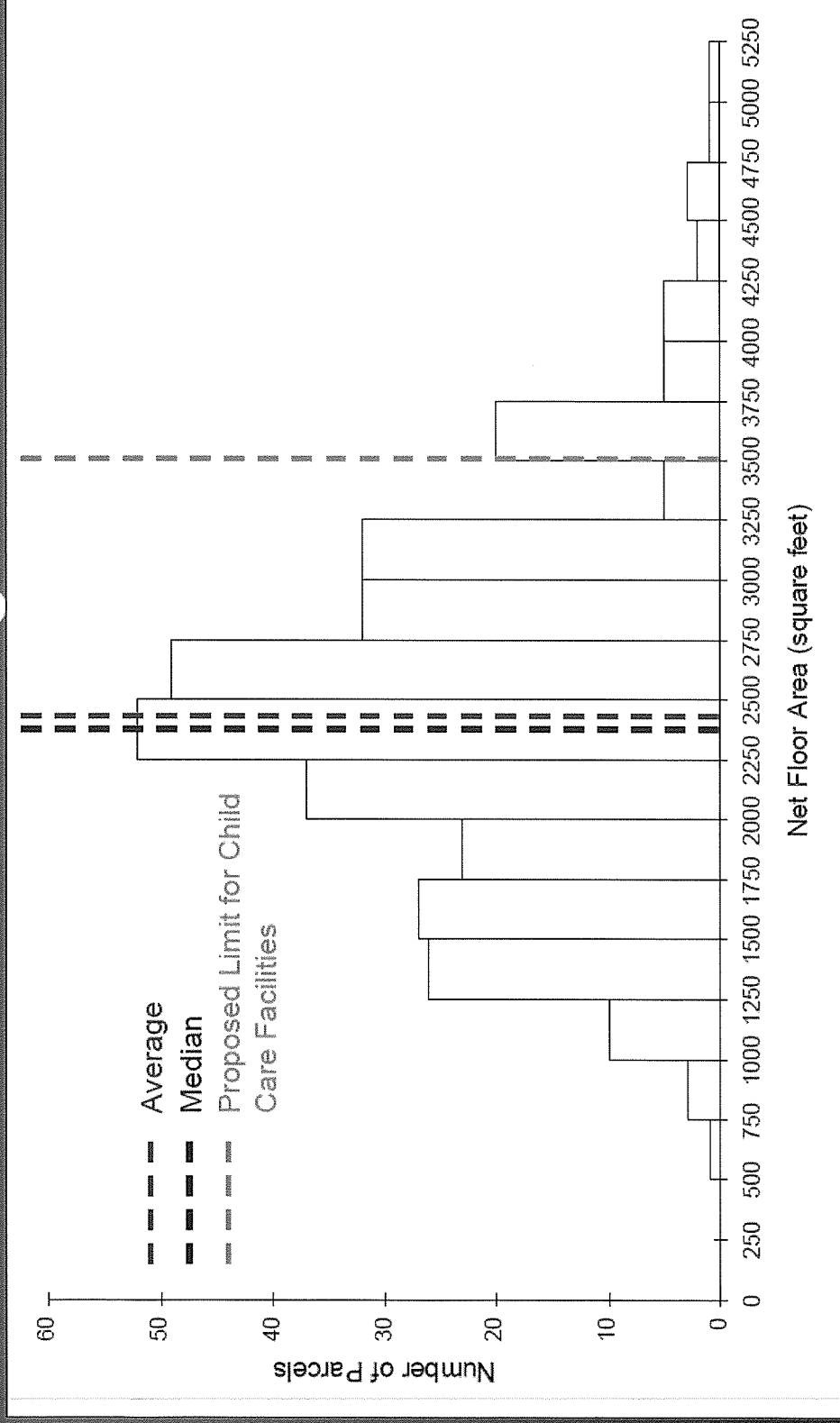


# R-2 Net Floor Areas of Residential Buildings



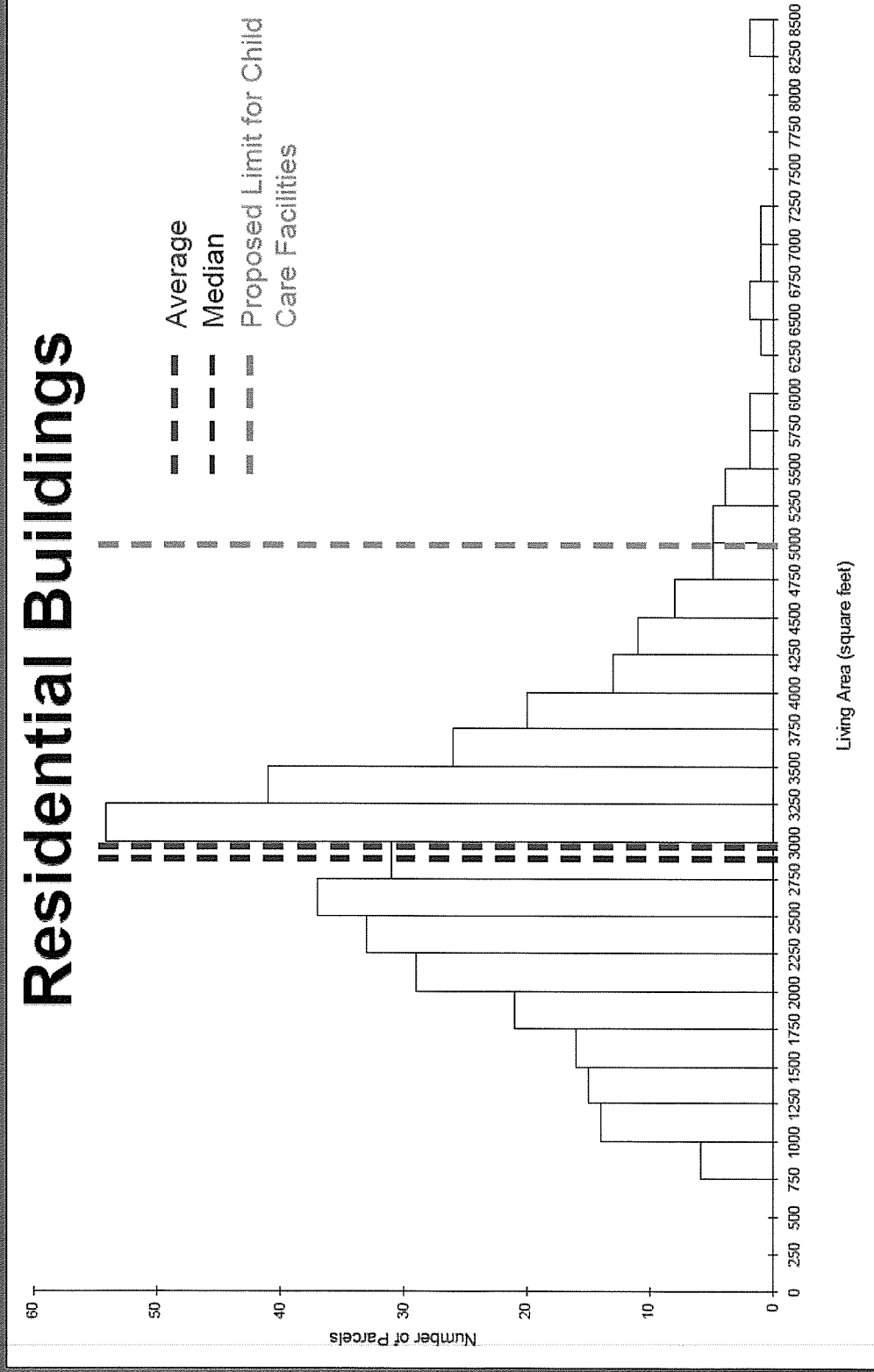
**Article 2 – Special Town Meeting June 23, 2009**  
**Zoning Bylaw Amendment**

# R-4 Net Floor Areas of Residential Buildings



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

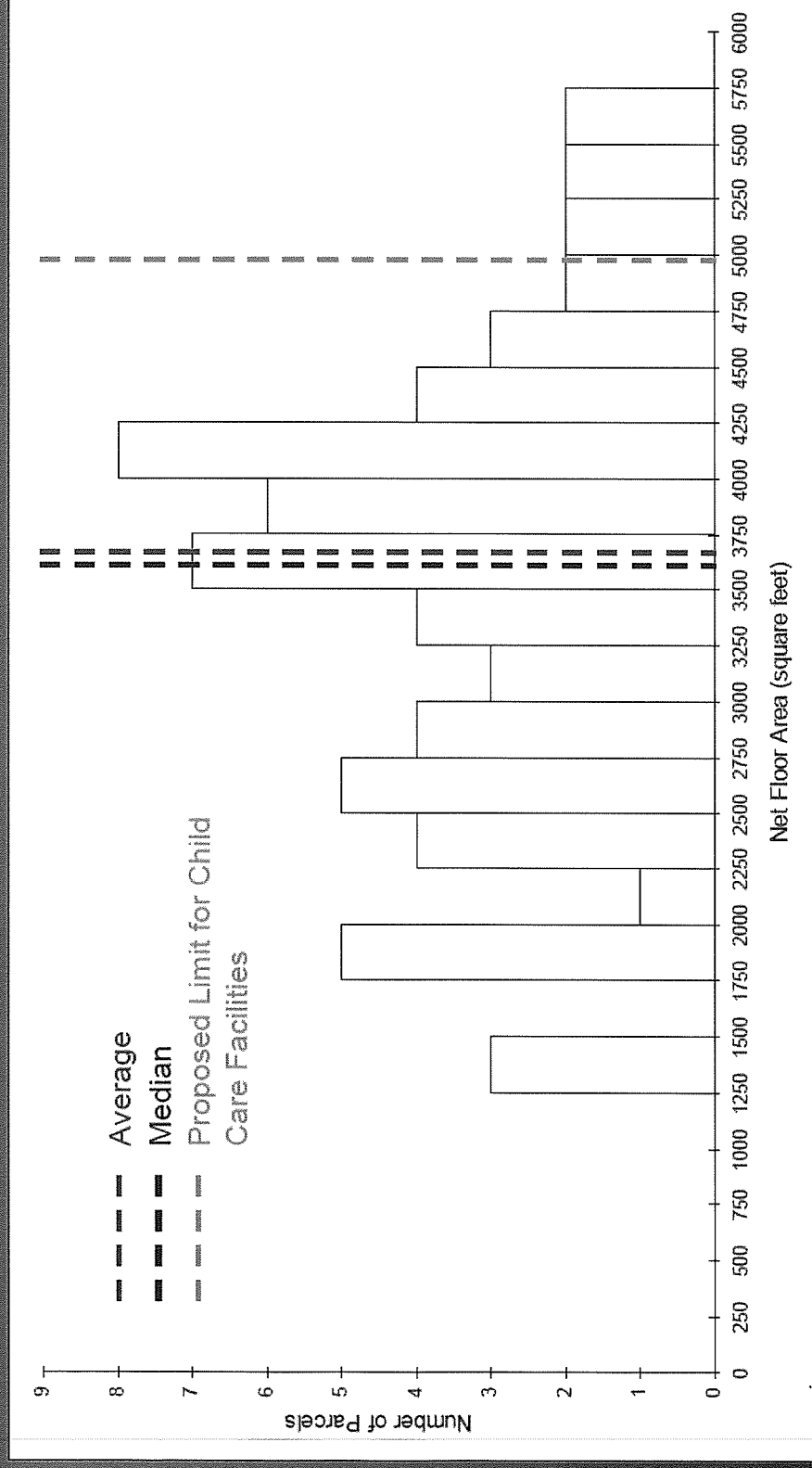
# R-8 & R-8/4 Net Floor Areas of Residential Buildings



**Article 2 – Special Town Meeting June 23, 2009**  
**Zoning Bylaw Amendment**

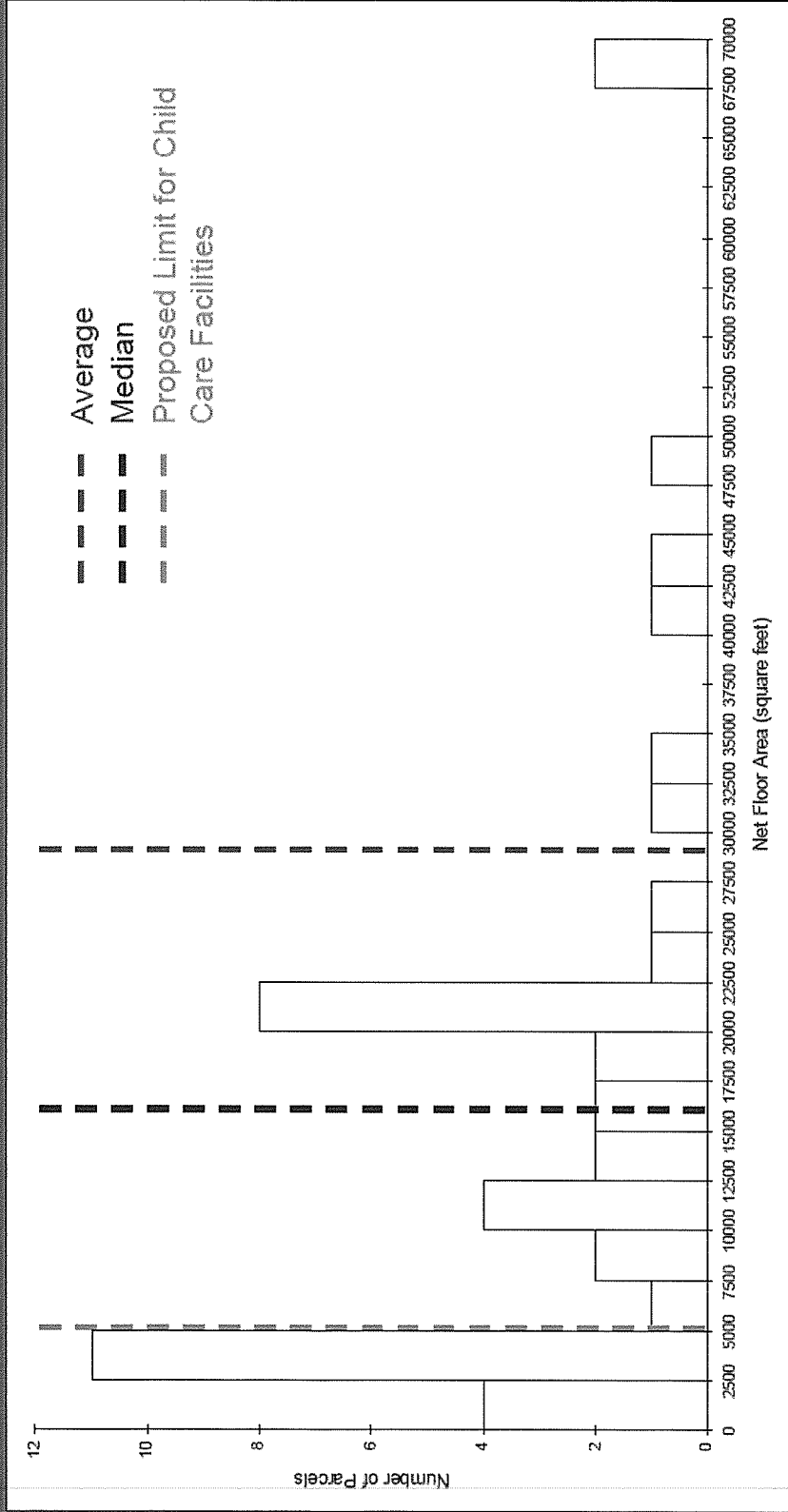


# R-10 & R-10/8 Net Floor Areas of Residential Buildings



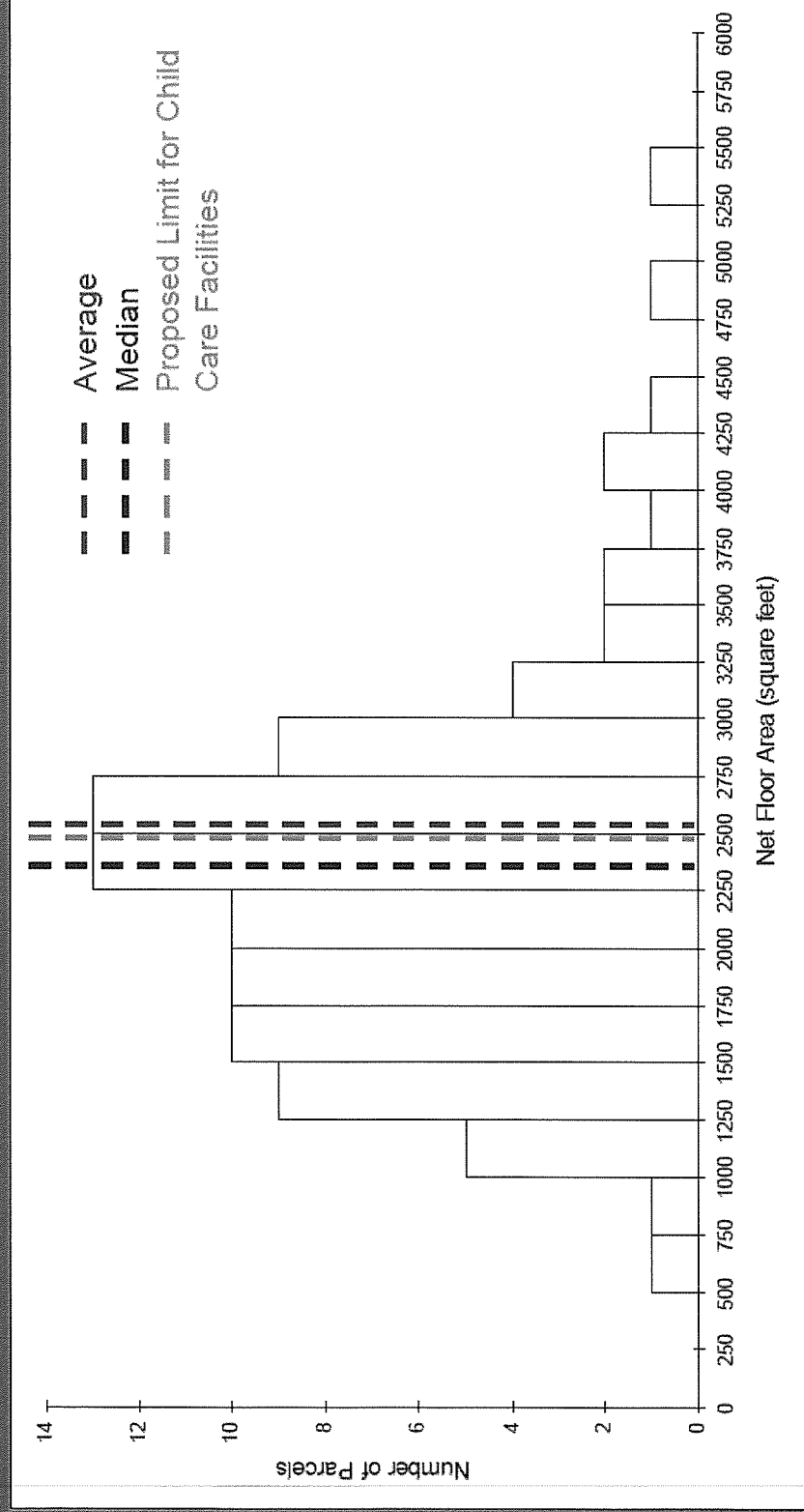
**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# R-A & R-AA Net Floor Areas of Residential Buildings



**Article 2 – Special Town Meeting June 23, 2009**  
Zoning Bylaw Amendment

# VR Net Floor Areas of Residential Buildings



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

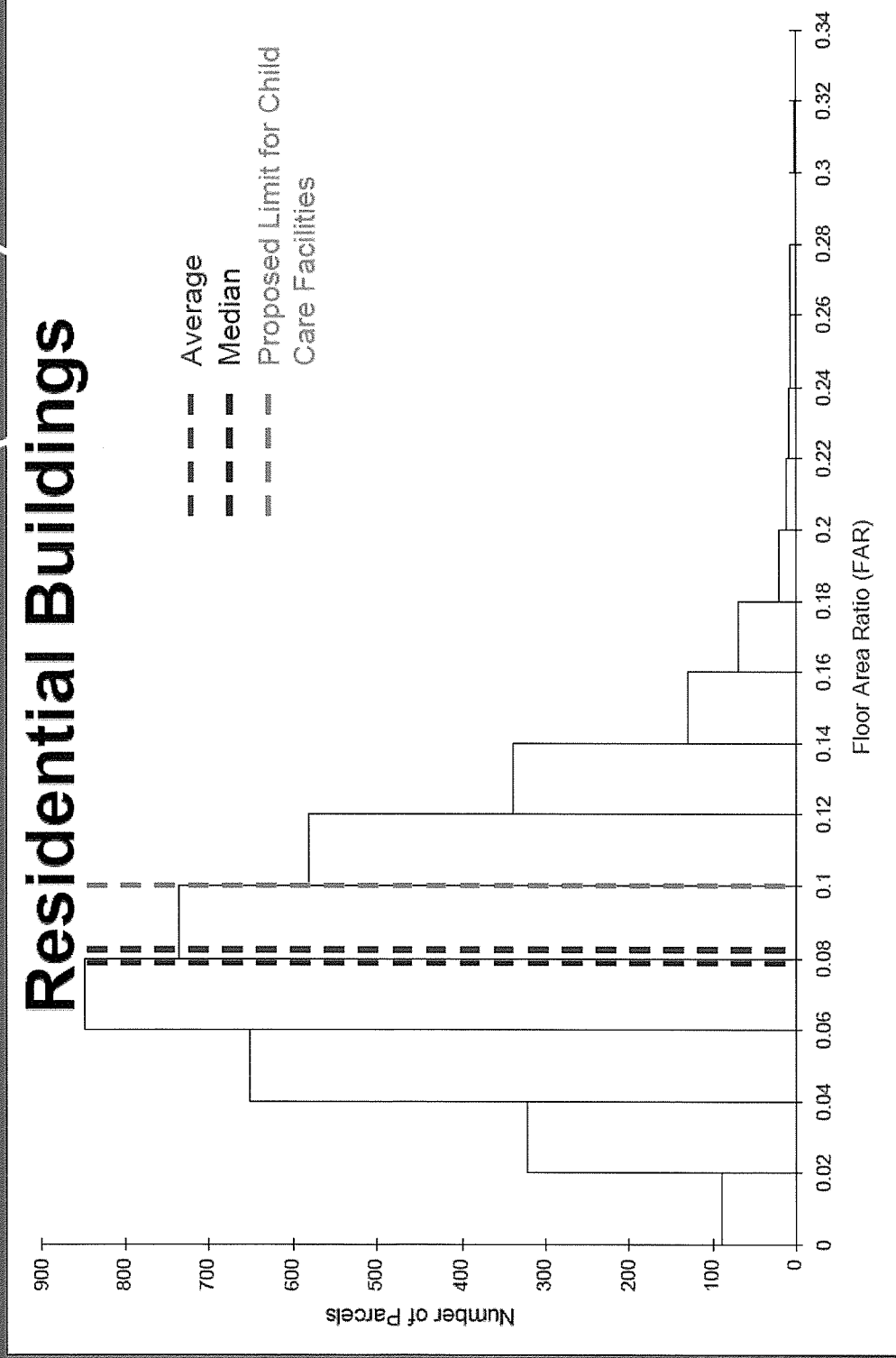


# Floor Area Ratio (FAR) Histograms



**Article 2** – Special Town Meeting June 23, 2009  
*Zoning Bylaw Amendment*

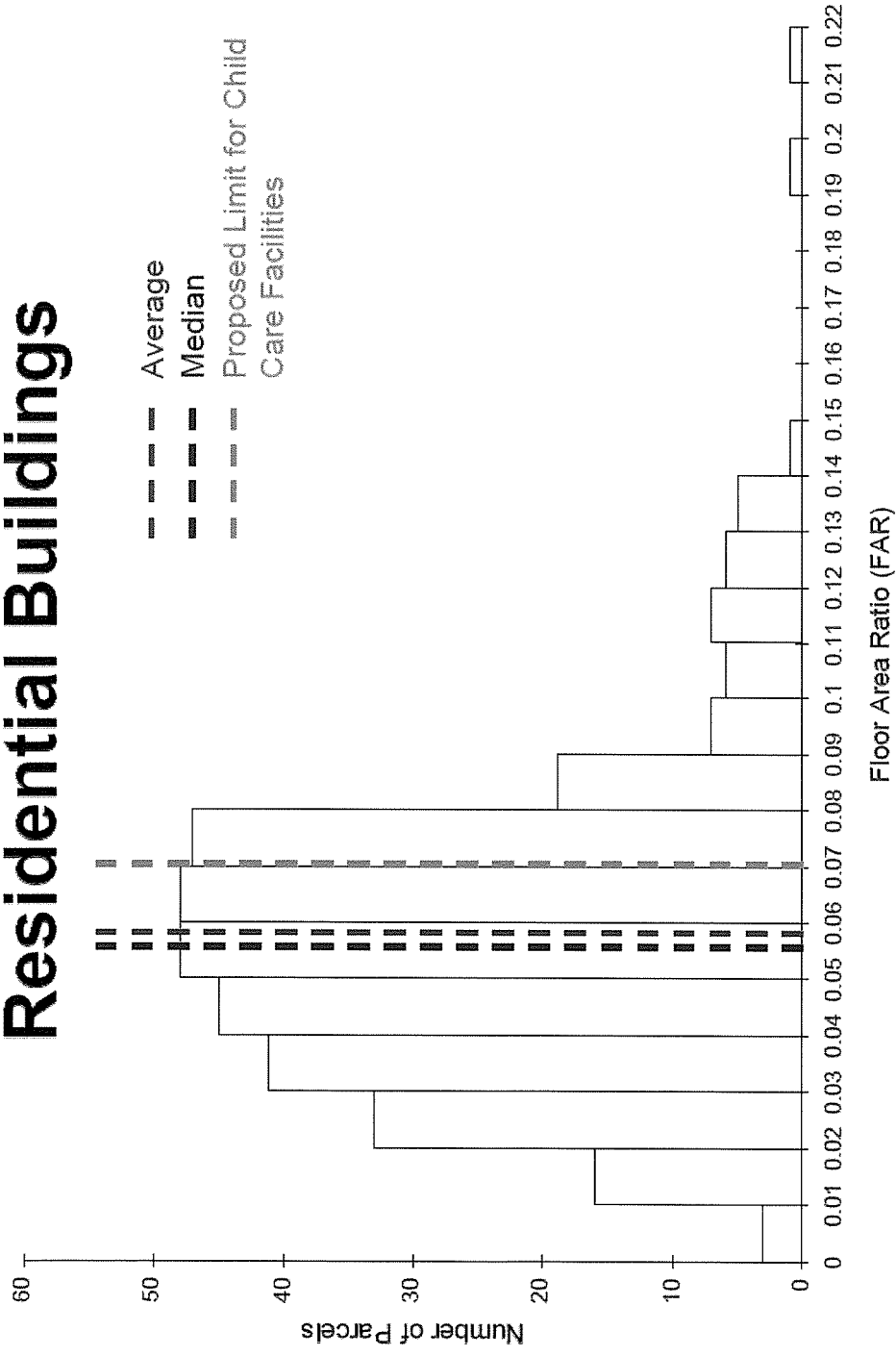
# R-2 Floor Area Ratios (FARs) of Residential Buildings



**Article 2 – Special Town Meeting June 23, 2009**  
**Zoning Bylaw Amendment**



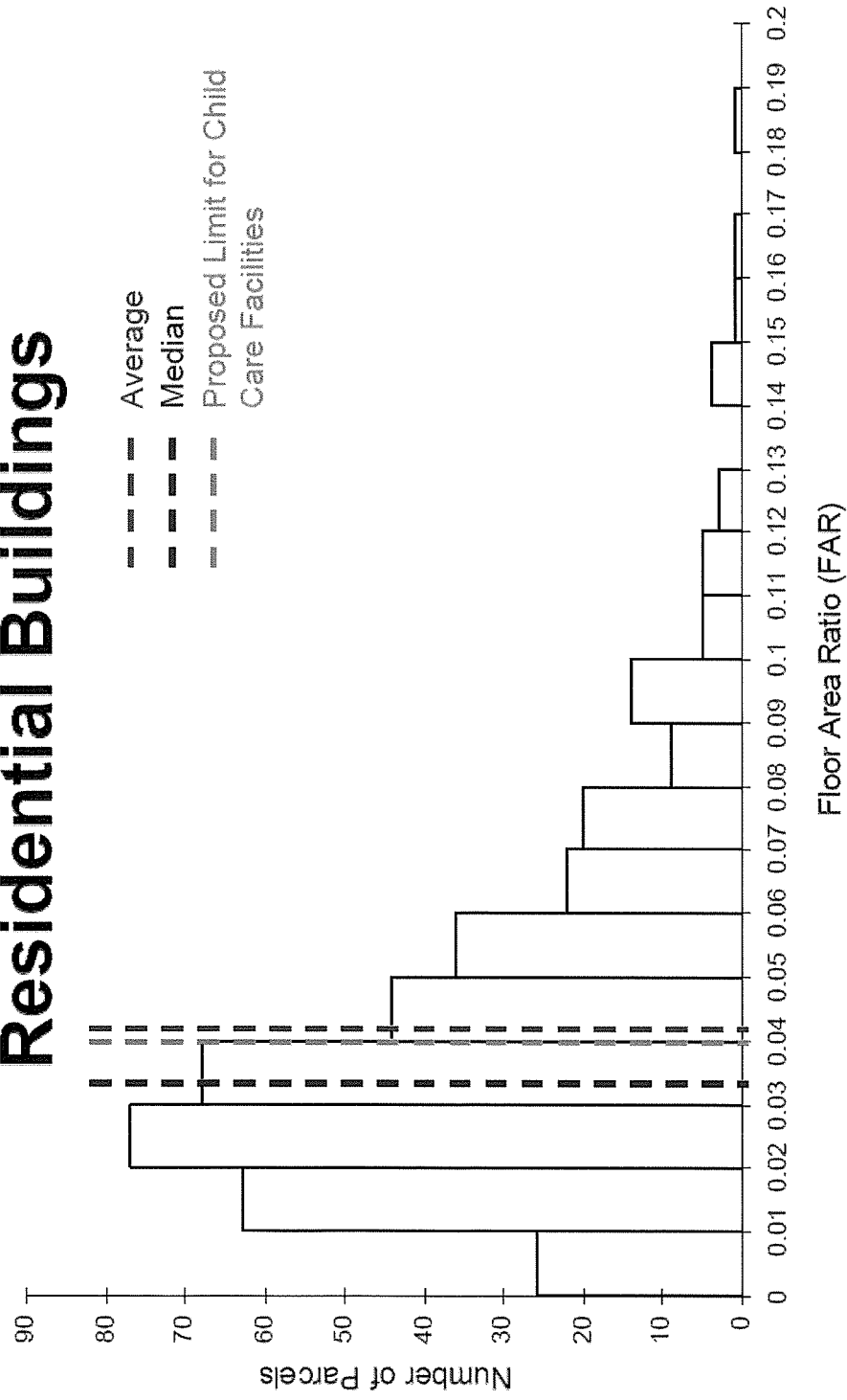
# R-4 Floor Area Ratios (FARs) of Residential Buildings



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

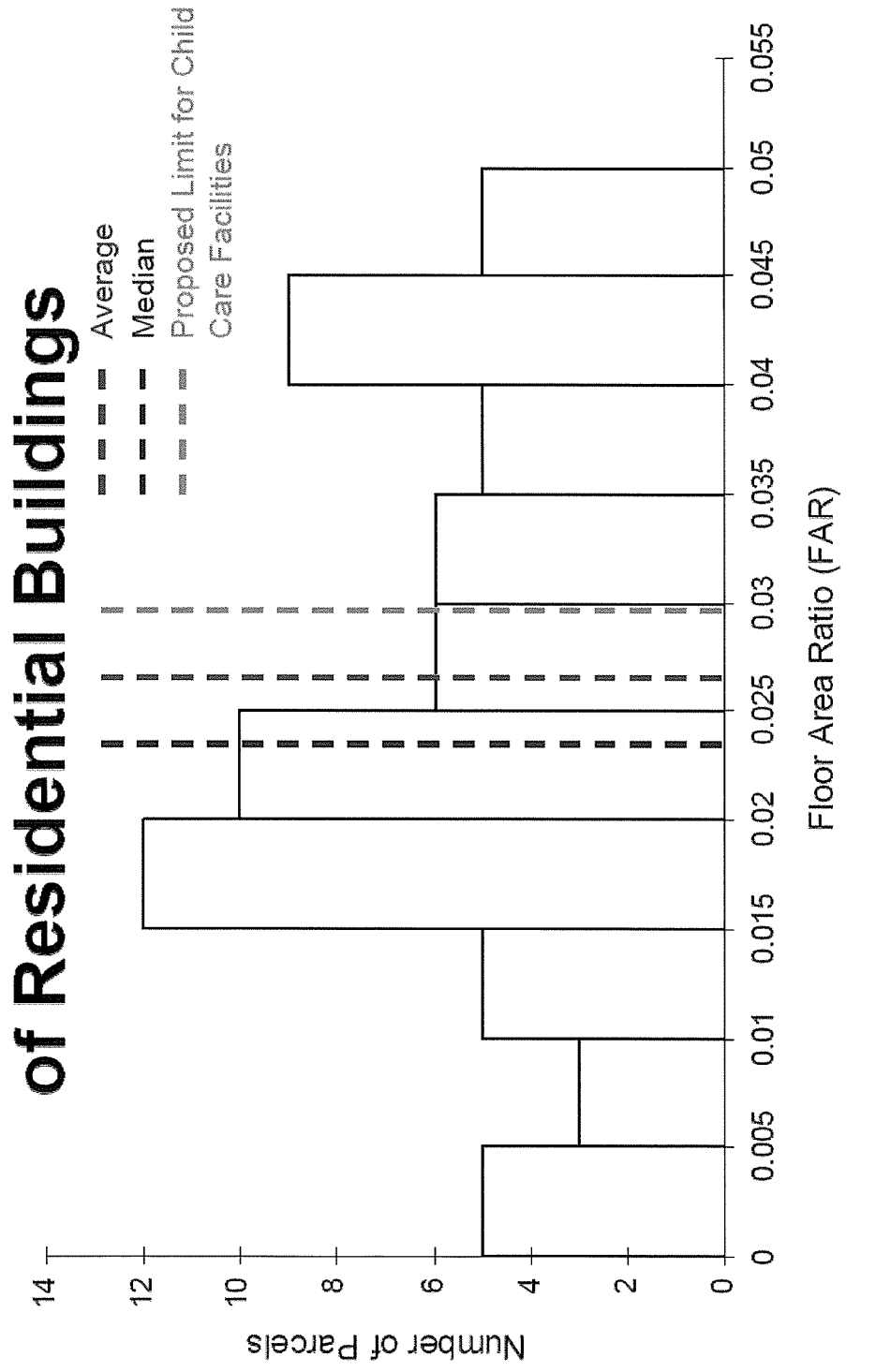
# R-8 & R-8/4 Floor Area Ratios (FARs) of

## Residential Buildings



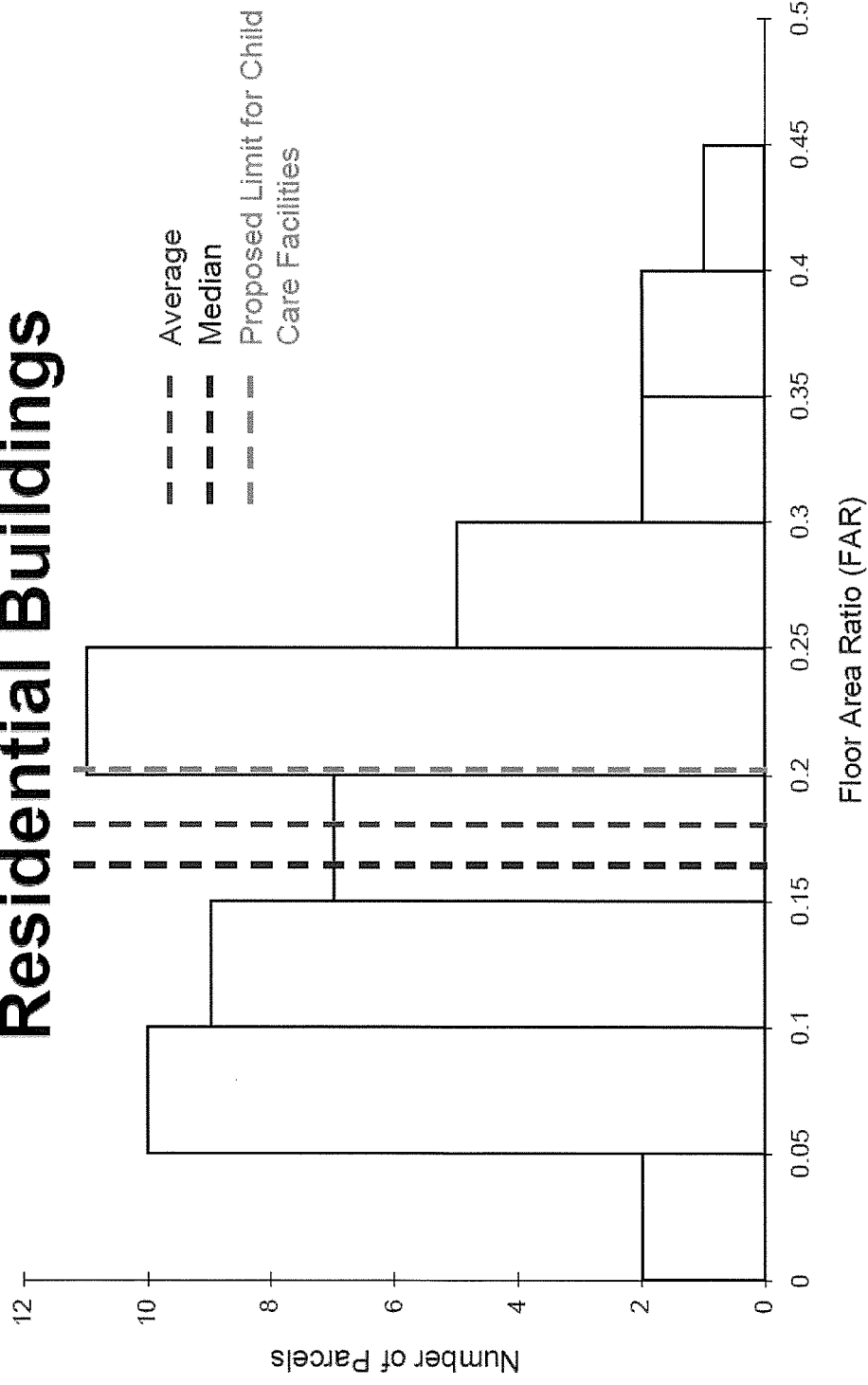
**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# R-10 & R-10/8 Floor Area Ratios (FARs)



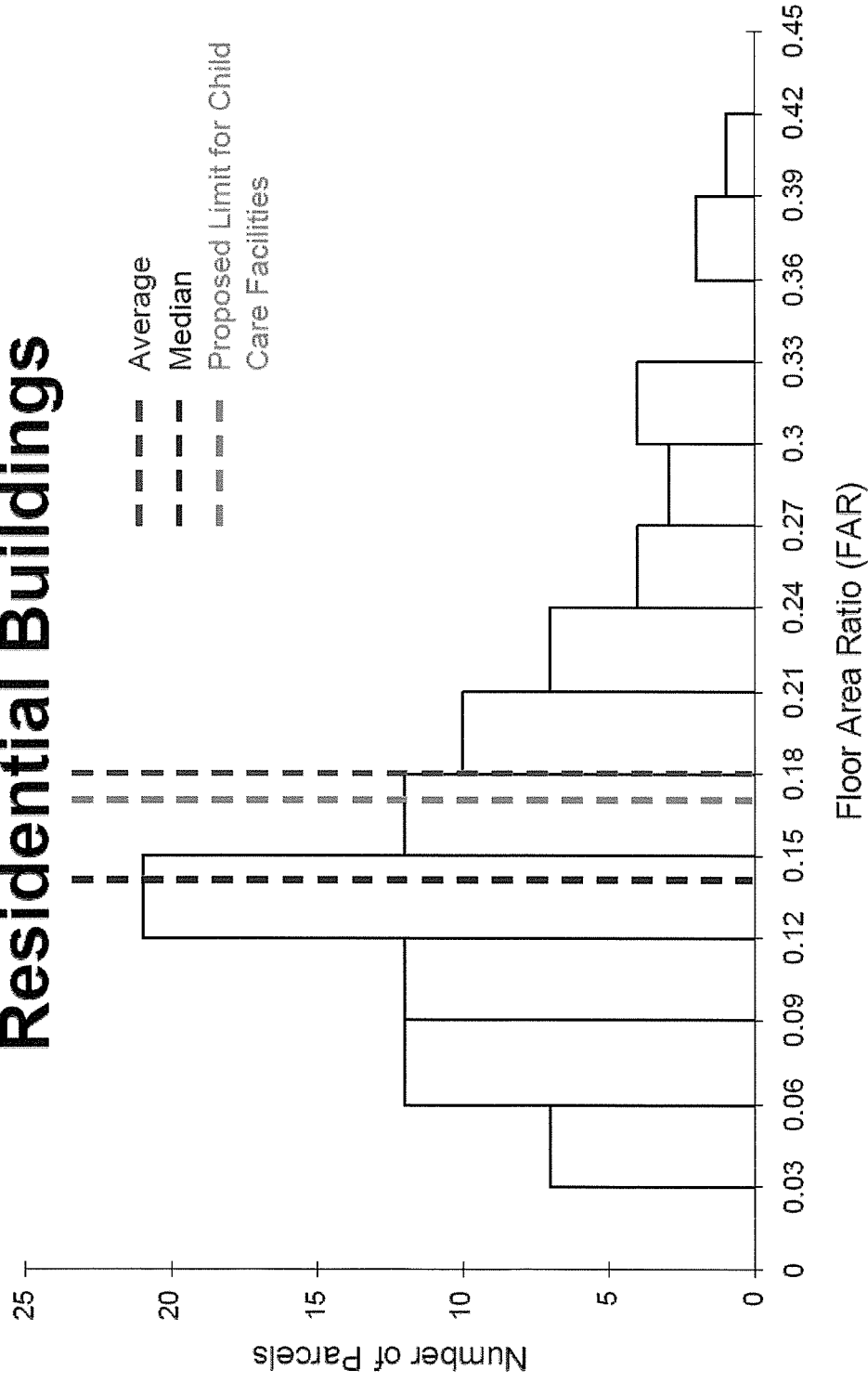
**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# R-A & R-AA Floor Area Ratios (FARs) of Residential Buildings



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

# VR Floor Area Ratios (FARs) of Residential Buildings



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment



# Examples of Existing Child Care Facilities

Name	Address	Zoning District	Building Sq. Ft.	Floor Area Ratio (FAR)
Acton's Children's School	394 Mass. Ave. (across Roche Bros.)	KC	4360	0.08
Blossom Station Child Care Center	222 Main St. (at Ace Hardware)	KC	9464	N/A
<i>Infant Toddler Children's Center</i>	<i>149 Central St. (+/- across Mt. Hope Cemetery)</i>	<i>R-2</i>	<i>2061</i>	<i>0.01</i>
KinderCare	90 Hayward Rd. (at AB High School)	GI	6052	0.08
KinderCare	5 Post Office Sq. (at Acton Post Office)	LI-1	9120	N/A
<i>Learn &amp; Play Preschool</i>	<i>245 Main St. (just south of Beverly Rd.)</i>	<i>R-2</i>	<i>1008</i>	<i>0.04</i>



**Article 2** – Special Town Meeting June 23, 2009  
Zoning Bylaw Amendment

**Presenter Notes:**

Page 2:  
T

ERROR: invalidfont  
OFFENDING COMMAND: xshow

STACK:

```
[48 46 44 26 70 20 46 19 70 46 70 27 46 46 70 46 44 30 26 46 26 26 30 45  
46 46 19 30 44 46 26 46 44 30 41 19 47 46 26 37 46 44 38 44 37 27 26 45  
30 26 39 46 19 19 46 26 38 44 30 44 26 26 45 38 19 19 19 28 19 44 37 26  
19 37 29 0 ]  
(  
' ( ) * + * ), ) + , ) - ( . / 0 . ( 1 , * . ( 2 34.5 * + 6 7348 ( 7 0 / . 8 ' * 9 2 84 . ( 048 * 9 * : * ( 7 * 7 ;  
)
```